
(1969) 09 PAT CK 0001
In the Patna High Court
Case No : Tax Case No"s. 41 to 43 of 1966

Budhram Kashiram

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 22-09-1969

Acts Referred:

Bihar Sales Tax Act, 1947 — Section 24(5)(a), 5(a)(ii)

Citation : (1970) 26 STC 505

Hon'ble Judges : S.C. Misra, C.J.;S. Wasiuddin, J

Bench : Division Bench

Advocate : Ramanugrah Prasad, for the Appellant; S. Sarwar Ali, for the Respondent

Judgement

S.C. Misra, C.J.—The assessee, M/s. Budhram Kashiram, was assessed to sales tax for the periods 2nd of November, 1956, to the 31st of March, 1957 and 1957-58. But on a subsequent inspection of the business premises of the dealer on the 24th June, 1959, several books of account of the dealer were seized and, with reference to such books of account, the assessments for these two periods were reviewed and fresh order of assessment was passed. Assessment for the third period from 1958 to 1959 was also made. According to the dealer, the books of account seized disclosed a considerable amount of credit sales to registered dealers and such sales had been deducted out of the total turnover of the assessee in terms of explanation (a)(ii) below Section 5 of the Bihar Sales Tax Act, 1947. The assessee's contention was, however, rejected by the assessing officer, on the ground that declaration as required under Rule 18 of the Bihar Sales Tax Rules, 1949, was not produced in support of the claim. The appeal preferred by the assessee was dismissed and when the matter was taken to the Board of Revenue, the Board also by its order dated the 8th of February, 1962, accepted the view expressed by the authorities below that it was necessary for the dealer to produce the declaration even for credit sales in order to justify the deduction which the dealer sought out of his total turnover.

2. The dealer filed an application for reviewing the Board's order on the ground that the Board was not right in taking the view that it was necessary to produce the declaration in respect of credit sales to registered dealers. The Commercial Taxes Tribunal, which ultimately dealt with this petition by the dealer u/s 24(5) (a) of the Act, rejected the contention of the dealer. Application was accordingly filed u/s 25(1) of the Act before the Tribunal with a prayer that the two questions formulated on its behalf should be referred to the High Court, but the Tribunal rejected the prayer on the ground that no case was made out for making the reference as submitted on behalf of the dealer, after which this Court was moved u/s 25(2) of the Act. Direction was issued by the Court to the Tribunal to refer the following question and reference has been made accordingly. The question is : -

Whether in the circumstances of this case the Tribunal was justified in refusing to rectify the order of the Board of Revenue, Bihar, dated 6th February, 1962, u/s 24(5)(a) of the Bihar Sales Tax Act, 1947 ?

3. Reliance was placed on behalf of the assessee on the decision of the Supreme Court in the case of State of Orissa Vs. M.A. Tulloch and Co., . In that case the point for consideration was almost identical with the question raised on behalf of the assessee in the present case. The declaration contemplated in order to justify the claim for deduction of the amount under credit sales to registered dealers was subject to a declaration under Rule 27(2) of the Orissa Sales Tax Rules, 1947. The dealer in that case had not produced the declaration and the claim of the dealer was rejected on that ground. The Supreme Court held, however, that production of mere declaration was not mandatory as Rule 27(2) must be reconciled with Section 5(2)(a)(ii) of the Orissa Sales Tax Act, 1947. Hence, it was open to the dealer to claim exemption by adducing other evidence so as to bring the transaction within the scope of that section. Therefore, if the Sales Tax Officer is satisfied on the other facts on record that there is such a sale on credit to the registered dealer, it is not necessary that the selling dealer must produce a declaration in the form required under Rule 27(2) before he can be held entitled to the declaration sought for. It was urged on behalf of the dealer that in view of the pronouncement of the Supreme Court, the Board was clearly in error in insisting upon the production of the form of declaration as a necessary condition for accepting the plea of sale to registered dealers. The Tribunal, however, did not consider that there was any error apparent on the face of record in the decision of the Board of Revenue which would bring the matter within the ambit of Section 32 of the Sales Tax Act, 1959, so as to justify a review of the order. A mere erroneous decision is no ground for review of a final order or judgment unless the error is apparent on the face of record. Since the Board of Revenue had no power to review its order, the Tribunal also, as its successor had no higher power. The contention of the assessee that the Tribunal had power higher than that possessed by the Board in the matter of review was negated on the ground that the Bihar Sales Tax Act, 1959, came into effect from the 1st of July, 1959. The liability of the applicant to pay sales tax accrued prior to the date of

commencement of the Bihar Sales Tax Act, 1959 and hence in terms of Section 47 of the 1959 Act, all proceedings relating to such liability could be continued and disposed of under the provisions of the Bihar Sales Tax Act, 1947, as if the Bihar Sales Tax Act, 1959, had not been passed and the power of the Tribunal to review any order under the Bihar Sales Tax Act, 1947, was coextensive with the power of the Board and as such the Tribunal could not exercise any higher power than what the Board of Revenue itself was vested with in the matter of review of its order. In my opinion, the argument is correct and it is in consonance with the decision of the Supreme Court in *Thungabhadra Industries Ltd. Vs. The Government of Andhra Pradesh*, wherein their Lordships distinguished mere erroneous decision from error apparent on the face of record. In my opinion, therefore, the Tribunal was right in proceeding upon the footing that it had no power to exercise its review jurisdiction in giving effect to the decision of the Supreme Court in the above Orissa case.

4. The main question, however, for consideration still remains as to whether it was obligatory for the dealer to produce declaration in respect of the credit sales in order to claim deduction of this amount out of the taxable turnover, which is the question formulated and referred to this court. The Tribunal has distinguished the Orissa case on merit also, on the ground that their Lordships of the Supreme Court have only ruled that even without the production of the declaration form, the assessee can be granted exemption in respect of the credit sales, if the Sales Tax Officer is satisfied from other materials on record that such a sale has been made. It was not always obligatory on the part of the selling dealer to produce the declaration. If, however, the assessing authority is not so satisfied from other materials on record, the assessee cannot get the benefit of exemption of credit sales without producing the required declaration. The Board of Revenue in paragraph five has referred to Rule 18 of the Bihar Sales Tax Rules as amended in Government Notification No. 4995, dated the 7th April, 1956, which runs thus:

18. Conditions subject to which a dealer may claim deduction from gross turnover on account of sale of goods to registered dealers.-A dealer who wishes to deduct from his gross turnover the amount of a cash or credit sale to a registered dealer shall produce the copy of the relevant cash memo, or bill according as the sale is a cash sale or a sale on credit and a true declaration in writing in Form VI-A by the purchasing dealer or by such responsible person as may be authorised in writing in this behalf by such dealer that the goods in question are specified in the certificate of registration of such dealer and are required by such dealer either for use in the execution of any contract or for resale or for use in packing of taxable goods for resale.

There is nothing on record to show that any attempt was made on behalf of the dealer to satisfy the taxing authority that there was any other material on record to show that the goods were purchased by the purchasing dealer for use in the execution of any contract or for resale or for use in packing of taxable goods for resale as is required under Rule 18. In the absence of any such material

produced before the taxing authority, the view expressed by the Tribunal must be accepted as correct and the question must be answered against the assessee, both, in the matter of the power of the Tribunal to rectify by review the order of the Board as also on merit with reference to the ratio of the decision of the Supreme Court in the above case.

5. The question referred to is accordingly answered against the assessee.

S. Wasiuddin, J.

6. I agree.